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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1973

NO. 73-625

ALLENBERG COTTON COMPANY, INC.,
Appellant,

v.

BEN E. PITTMAN,
Appellee.

On Appeal from the Supreme Court of the State of Mississippi

SUPPLEMENTAL BRIEF OF APPELLANT CONTAINING NEW CASE AUTHORITY

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Appellant

v.

BEN E. PITTMAN,
Appellee

On Appeal from the Supreme Court of the State of Mississippi

SUPPLEMENTAL BRIEF OF APPELLANT CONTAINING NEW CASE AUTHORITY

Pursuant to Rule 16 of this Court, Appellant Allenberg hereby calls the Court's attention to the Memorandum of Opinion in the companion cases of *Allenberg Cotton Company, Inc. v. R. W. Coleman, et al*, No. EC 73-89-S, and *Cone Mills Corporation v. Wayne Hurdle, et al*, No. WC 73-91-S, decided January 10, 1974, in the United States District Court for the Northern District of Mississippi.

This decision was not available at the time the Jurisdictional Statement was filed on October 9, 1973.

This Memorandum Opinion is directly in point to the issues raised in this appeal and discusses the effect on interstate commerce of the Mississippi Supreme Court's decision in the present case here under consideration in this Court. The Memorandum Opinion follows *Dahnke-Walker*[1] and holds that Allenberg Cotton Company and Cone Mills Corporation may enforce contracts in Mississippi courts for the purchase of cotton in Mississippi without qualifying to do business in Mississippi because such purchases are made in interstate commerce.

Because of the importance of the Memorandum Opinion as authority in this case, and because of its scholarship in reviewing the leading Commerce Clause decisions in agricultural cases, the opinion is set out virtually verbatim in the appendix. Counsel is informed that the Memorandum Opinion will be published, but no citation is available at the present time.

CONCLUSION

For the reasons set forth in Allenberg's Jurisdictional Statement, and based on the additional authority of *Allenberg Cotton Company, Inc. v. Coleman, supra*, appellant prays for summary reversal, or, in the alternative, that probable jurisdiction be noted.

Respectfully submitted,

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[1] **Dahnke-Walker Milling Co. v. Bondurant**, 257 U.S. 282 (1921). This is the central case relied upon by appellant in this appeal. See Jurisdictional Statement, p. 17.

Appendix

[fol. 1] **In The**

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF MISSISSIPPI

CONE MILLS CORPORATION, *Plaintiff* v. WAYNE HURDLE, ET AL, *Defendants*	No. WC 73-91-S
ALLENBERG COTTON CO., INC., *Plaintiff* v. R. W. COLEMAN, ET AL, *Defendants*	No. EC 73-89-S

MEMORANDUM OF OPINION

A. PRELIMINARY STATEMENT

Each of the above actions is before the court upon a motion to dismiss. Relevant facts have been presented by way of affidavits and admissions. The motions have been briefed and argued extensively. The court has also received amicus curiae briefs from two trade associations with a meaningful interest in the resolution of the primary issue before the court.[1] The trade associations furnish-

[1] There are several grounds upon which each motion is based, but the primary ground, common to both actions, is that the corporate plaintiff is barred from access to this court to enforce the contracts because, as a foreign corporation, it engaged in doing business in Mississippi without having qualified to do so as required by Mississippi law.

[fol. 2] ing briefs are The American Textile Manufacturers Institute, a trade association for the cotton, man-made fibers, silk, and wool segments of the United States textile industry, and The American Cotton Shippers Association, a trade association of cotton merchants, shippers, and exporters.

The court's jurisdiction is invoked under 28 U.S.C.A. § 1332. Violations of the Commodity Exchange Act[2] and the Sherman Anti-trust Act[3] have also been alleged. At this stage, however, the fundamental question in each action involves the enforceability vel non of contracts for the advance or forward sale of cotton fiber grown for the 1973 crop year. Although these actions do not arise in identical factual settings, they share remarkable similarities and involve the same primary issue of law. The court, therefore, has decided to consider and discuss both in a single opinion.

During 1973 the price of raw cotton fiber on world markets rose in a sudden and spectacular fashion. Weather conditions, unprecedented foreign and domestic demand, dollar devaluation, and related factors combined to cause the market price to more than double within a six month period. When money speaks enticingly, listeners often become litigants.

The court will take judicial notice of its own docket and observe that literally scores of suits have been filed to either enforce or rescind advance or forward [fol. 3] contracts for the sale and delivery of cotton fiber. In the present actions, buyer-plaintiffs

2 7 U.S.C.A. § 6(c).

3 15 U.S.C.A. § 1.

are seeking to enforce cotton contracts on the terms and conditions allegedly agreed upon. The seller-defendants have moved to dismiss on several grounds. As noted, their primary contention is that a foreign corporation doing business in Mississippi without having qualified to do so prior to execution of the contracts is barred by Mississippi law from access to any court in Mississippi, state or federal, to enforce the contracts.

B. THE CONTRACTUAL BACKGROUND

Cotton growers have traditionally sold their annual harvest on the open market some time after planting. Government price supports have, in some measure, enabled growers to reduce the risk of a buyer's market during seasons of abundant harvest or lagging demand.[4] The government's purpose has been to encourage continued, steady production by insuring an adequate profit for the grower. Since an artificial market tends to promote surplus production, the government may also pay to insure that crops are planted only on a limited number of acres.

Increasing sophistication in growing, milling, and marketing techniques has fostered the utilization of the "forward" contract; a relatively new feature which is now gaining acceptance throughout the cotton industry. By forward contracting, a grower agrees to sell his future crop before it is planted or soon thereafter. A [fol. 4] capable farmer can virtually assure himself a profit even before planting. If he is unable to negotiate a price which he anticipates will be profitable, he may plant other crops which are in demand or simply allow his land to lie fallow. Thus, in theory at least,

4 7 U.S.C.A. § 1421, et seq.

forward contracting will help restore traditional principles of supply and demand to the cotton market with the added feature that the element of risk is reduced.

The grower, moreover, can borrow on forward contracts and textile mills can price their finished product long before manufacture. Forward contracting also enables the retail merchant to determine the price of an article manufactured from cotton months in advance. However, these qualities are discussed merely to provide background. It is not necessary to consider the social aspects of forward contracting in order to reach a decision.

C. THE FACTUAL BACKGROUND

(1) Cone Mills Corporation (Cone), the plaintiff in WC 73-91-S, is a corporate citizen of North Carolina with its principal place of business in that state. Cone manufactures textiles and operates mills in several states for that purpose. None, however, are or were during the pertinent period situated in Mississippi. The defendants, both individuals and partnerships, are citizens of Benton or Marshall Counties, Mississippi. They are cotton growers or producers.

Cone utilizes or blends various grades and varieties of cotton to manufacture textiles, and apparently
[fol. 5] buys cotton direct from many areas. The cotton grown in Benton and Marshall Counties is strict low middling or better 1-1/16 inch staple; a variety primarily used by Cone to manufacture corduroy fabric.

Through a local agent, Cone executed the subject contracts in Mississippi at a time when it had not qualified to do business in Mississippi. Qualification was subsequently perfected on September 27, 1973, seventeen days after

Cone received notification from the defendants, all of whom acted upon the advice of the same attorney, that they would not honor the contracts nor deliver the cotton.

Each contract provided that the cotton was to be delivered to the buyer at a Mississippi gin or compress. On each of the contracts Cone's place of business was penciled in as "Slayden, Mississippi". Slayden, however, was the residence of Cone's agent. Although several of the defendants had sold their 1972 crop to Cone's agent, each denied having knowledge that Cone was the actual purchaser. Apart from the contracts, evidence adduced on behalf of the plaintiff demonstrates that Cone at all times contemplated loading the cotton on board trucks after ginning for shipment to its mills outside Mississippi.

(2) Allenberg Cotton Co., Inc. (Allenberg), the plaintiff in EC 73-89-S, is a corporate citizen of Tennessee with its principal place of business in that state. Allenberg is primarily a merchant or "middle-man" company engaged in the business of buying and selling cotton in numerous states, including Mississippi. Allenberg also merchandises cotton in foreign countries. The defend-
ants are citizens of and cotton growers in
[fol. 6] Chickasaw and Lee Counties, Mississippi.

The subject contracts were initially executed in Mississippi by the defendants and Allenberg's agent, also a corporate citizen of Tennessee. Subsequently, they were transmitted to Memphis and signed by an officer of Allenberg. The defendants were aware they were selling their crop to Allenberg. The contracts called for the cotton to be ginned and baled locally and delivered on board Allenberg's trucks at the gin.

At the time of execution, Allenberg had not qualified to do business in Mississippi. On May 29, 1973, Allenberg qualified. About September 25, Allenberg was notified that defendants would not honor the contracts nor deliver the cotton.

D. DETERMINING THE APPLICABLE LAW

Miss. Code Ann. § 79-3-211 (1972) provides in pertinent part:

> No foreign business corporation for profit shall have the right to transact business in this state until it shall have procured a certificate of authority so to do from the secretary of state . . .
>
> Without excluding other activities which may not constitute transacting business in this state, a foreign corporation shall not be considered to be transacting business in this state, for the purposes of this chapter, by reason of carrying on in this state any one or more of the following activities:
>
> . . . .
>
> (e) Transacting any business in interstate commerce.

[fol. 7] *Miss. Code Ann.* § 79-3-247 (1972) provides in pertinent part:

> No foreign corporation transacting business in this state without a certificate of authority shall be permitted to maintain any action, suit or proceeding in any court of this state . . . .
>
> The failure of a foreign corporation to obtain a certificate of authority to transact business in this state shall not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action, suit or proceeding in any court of this state.

Miss. Code Ann. § 79-3-289 (1972) provides in pertinent part:

> The provisions of this chapter shall apply to commerce with foreign nations and among the several states only in so far as the same may be permitted under the provisions of the Constitution of the United States.

The penalty or sanction statute, § 79-3-247, is designed to enable Mississippi citizens to seek necessary judicial redress locally by encouraging "foreign" corporations transacting business in Mississippi to make themselves amenable to process in this state.[5] On its face, the penalty statute appears to apply a broad and independent prohibition. However, the Mississippi Supreme Court regularly construes the penalty provision in conjunction with § 79-3-211, *supra*. E. g., *Ross Construction Co. v. U. M. & M. Credit Corp.*, 214 So.2d 822 (Miss. 1968).

This court, therefore, concludes that the legislative exceptions, embodied in § 79-3-211, to [fol. 8] the qualification or licensing requirement are applicable to the penalty statute as a matter of Mississippi law.

In *Parker v. Lin-Co.*, 197 So.2d 228, 230 (Miss. 1967) the Mississippi Supreme Court held:

> It is the opinion of this Court that the Legislature prohibited a foreign business corporation from doing business in this state without first qualifying as required by the act, and in the event such corporation

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[5] Compare the provisions of the state's long arm statute, **Miss. Code Ann.** § 13-3-57 (1972).

violated this prohibition, it could not use the courts of this state to enforce any right of action that accrued prior to the time it qualified to do business in this state. To allow a corporation that has violated the express terms of the statute to avoid the effect of the statute by qualifying only in the event it found it necessary to enforce a cause of action, would defeat the purpose of the Legislature. We hold that a foreign corporation doing business in Mississippi without having qualified as required by statute cannot use the courts of this state to enforce any cause of action that accrued as a result of doing such business.

Consequently, this court recognizes the prevailing rule of law in Mississippi to be that a foreign corporation which is doing business in Mississippi is precluded from resorting to the courts of this state to enforce an alleged right unless it had qualified to do business in Mississippi at the time of the transaction out of which such right arose, or unless the transaction falls within an exempted category; i.e., if the right it seeks to enforce is exempted or protected as a transaction in interstate commerce under the Commerce Clause of the Constitution of the
[fol. 9] United States.[6] The prohibition to prosecute an action in the state courts has been extended to federal courts sitting within the state. *Woods v. Interstate Realty Co.*, 337 U.S. 535 (1949).

Although this issue has not been discussed in any opinion, we conclude that the Mississippi Supreme Court would hold that the state legislature intended to adopt the federal constitutional standard when it enacted the interstate commerce exception to the qualification requirement. There-

[6] U. S. Const. Art. I, § 8, Clause 3.

fore, a Mississippi court, when determining what activities constitute interstate commerce within the contemplation of the exempting statute, would consider itself bound by the express language of § 79-3-289 of the Mississippi Code to apply the federal standard, if indeed there is any difference between state and federal standards. Otherwise, the statutory language "only in so far as the same may be permitted under the provisions of the Constitution of the United States" would be meaningless.

It would be unrealistic to conclude the interstate commerce exception was enacted as a voluntary exercise of legislative grace. It is a recognition of a constraint imposed upon state power by the Commerce Clause. This court, moreover, is obligated to adopt a construction of the Mississippi statute which will not force state law into a potential conflict with the federal constitution, unless an opposite construction is plainly required by clear state court precedent.

In determining whether the plaintiffs can maintain their actions in this court, we must, therefore, apply
[fol. 10] a state law which incorporates a federal constitutional standard. If the subject transactions constituted doing business in interstate commerce as that criterion is judged by the federal standard, then the plaintiffs are not barred from access to this court as a matter of Mississippi law although they had failed to qualify to do business at the time of the transactions.

Despite the fact that the state court must apply a federal standard, this court—as a federal forum—is not necessarily bound, even when sitting in a diversity case, by a prior determination of the highest state court on a matter arising under the Commerce Clause. *Kansas City Structural Steel Co. v. Arkansas*, 269 U.S. 148 (1925). Natu-

urally this court would rely heavily upon a determination by the Mississippi Supreme Court, particularly where a federal standard is applied to construe state law. Nonetheless, this court perceives a duty to make an independent adjudication of a right asserted by virtue of federal law unless an in-point decision by the state court has been given express, or clearly implied, approval by an appropriate federal tribunal. See, *Holmberg v. Armbrecht*, 327 U.S. 392 (1946).

In summary, sitting in diversity as a Mississippi Court we have determined that the state intended to and did incorporate a federal standard into state law. Thereafter, we must sit as a federal court to apply the standard.

E. DISCUSSION OF THE LAW

[fol. 11] None of the defendants seriously contend the cotton was not ultimately destined for shipment and use in interstate commerce. They urge that these particular transactions were wholly intrastate because the contracts were completed and the defendants' interest terminated before the cotton had any ascertainable destination outside Mississippi and the plaintiffs might have used or disposed of the cotton entirely within Mississippi. Defendants contend that the alleged intent of the plaintiffs to transport the cotton in interstate commerce was not fixed from the outset, and that these transactions were completed before there was or could have been interstate use or shipment. In support of their position, defendants rely heavily upon *Pittman v. Allenberg Cotton Co.*, 276 So.2d 678 (Miss. 1974), a case which presented facts and issues similar to those now before the court. Allenberg, a plaintiff here, was the appellee.

Pittman, a cotton grower in Quitman County, Mississippi, contracted to sell his 1971 crop to Allenberg. The contract resembled those involved in this litigation. After execution of the contract, the price of cotton fiber rose and Pittman failed or refused to perform. Allenberg brought suit in the Chancery Court of Quitman County for specific performance and damages. Pittman pleaded that Allenberg was doing business in Mississippi without having obtained a certificate of authority and was thus barred from resorting to a Mississippi court to enforce the contract. The chancellor determined that Allenberg was not doing business in Mississippi within the meaning of the statute and awarded damages in excess of $18,000 for breach of contract. On appeal, the Mississippi Supreme Court reversed and entered judgment for

[fol. 12] Pittman.

The basis of the decision was grounded upon the court's determination that Allenberg was in fact doing business in Mississippi within the meaning of the statute and, consequently, the transaction was not one in interstate commerce. The court reasoned that all Mississippi dealings were completed before the cotton had a known destination out-of-state. Allenberg presumably did not or could not prove its Mississippi activities were a direct component of a particular interstate transaction. Cf., *Union Cotton Oil Co. v. Patterson*, 116 Miss. 802, 77 So. 795 (1918). In *Pittman*, the court held at 681:

> It is apparent that these transactions of Allenberg in each case, including that with Pittman, took place wholly in Mississippi. The contract was negotiated in Mississippi, executed in Mississippi, the cotton was produced in Mississippi, delivered to Allenberg at the warehouse in Mississippi, and payment was made to

the producer in Mississippi. All interest of the producer in the cotton terminated finally upon delivery to Allenberg at the warehouse in Marks. The fact that afterward Allenberg might or might not sell the cotton in interstate commerce is irrelevant to the issue here, as the Mississippi transaction had been completed and the cotton then belonged exclusively to Allenberg, to be disposed of as it saw fit, at its sole election and discretion . . . .

Nor is the transaction converted into interstate commerce because, after the cotton had been delivered to Allenberg at the warehouse in Marks and title thereto had become vested in Allenberg, at its own election and for its own purposes, might afterward sell it in interstate commerce.

[fol. 13] The court, however, failed to state whether it was applying federal or state standards in construing interstate commerce, or whether, in its opinion, there is a difference. It is clear that the court did not assign great weight to the contention that the whole purpose of buying Mississippi cotton is to ship and use it in interstate commerce. In another context, this may have been a matter of judicial notice years earlier. "It is a matter of common knowledge in the cotton trade, of which the courts will take judicial notice, that cotton in a compress is on its way to market and ultimately to the textile mills, and that the market and the mills are often in other states or foreign countries". *Gidden v. Gidden*, 174 Miss. 108, 167 So. 785, 790 (1936).

In *Pittman*, the court apparently chose to apply a relatively narrow or, for lack of a better term, restrictive view of interstate commerce. It did not apply an "aggre-

gate effects" test,[7] or any other less rigid concept. An important element was the fact that the cotton was to be warehoused before shipment. *Pittman* is now pending an appeal before the United States Supreme Court and Allenberg has been afforded an opportunity to secure for the court's consideration of the jurisdictional statement a certificate from the Mississippi Supreme Court as to whether its judgment was intended to rest on an adequate and independent state ground or on federal grounds. *Allenberg Cotton Co., Inc. v. Pittman*, 42 LW 3362 (December 17, 1973).

[fol. 14] Defendants also rely on *Lilly & Co. v. Savon-Drugs*, 366 U.S. 276 (1961); *Federal Compress v. McLean*, 291 U.S. 17 (1934); and *Chassanoil v. Greenwood*, 291 U.S. 584 (1934). Both *Chassanoil* and *McLean* "involved taxes imposed by Mississippi on a cotton warehouse and compress business located within that state. The taxes were non-discriminatory and were levied both on the warehoused cotton and on certain processes necessary to ready it for subsequent resale. The taxes were challenged as unlawful burdens on interstate commerce, since most of the taxed cotton was ultimately to be shipped to out-of-state buyers. The Court upheld the constitutionality of the Mississippi taxes. It is not entirely clear from the Court's opinions whether their rationale was that the taxes were imposed before interstate commerce had begun, or that the burden on commerce was at the most indirect and remote." *Pike v. Bruce Church*, 397 U.S. 137, 141 (1970). In addition, both of "those cases involved cotton that had come to rest in Mississippi and '[b]efore shipping orders [were] given,

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[7] **Wickard v. Filburn**, 317 U.S. 111 (1942).

it [had] no ascertainable destination without the state.'" 397 U.S. at 141. The holding in *Lilly & Co. v. Sav-on-Drugs*, *supra*, was based on the fact that Lilly was conducting intrastate as well as interstate business. The suit arose out of Lilly's intrastate activities, and by such activities Lilly subjected itself to the requirements and sanctions of New Jersey's licensing laws.

The plaintiffs rely upon a series of cases involving the interstate shipment and use of wheat. In *Dahnke-Walker Milling Co. v. Bondurant*, 257 U.S. 282 (1921) the plaintiff operated a feed and flour mill in Tennessee. Bondurant, the defendant, was a Kentucky farmer.
[fol. 15] Dahnke-Walker contracted to purchase from Bondurant a crop of wheat estimated at 14,000 bushels. The contract was executed in Kentucky and the wheat was to be paid for there. The wheat was to be loaded by Bondurant on board the cars of a common carrier in Kentucky. Dahnke-Walker intended to ship the wheat to its mill in Tennessee. Dahnke-Walker had followed a practice of buying Kentucky wheat for its mill and, on previous occasions, had purchased wheat from Bondurant for this purpose. After partial delivery, the price of wheat advanced and Bondurant refused further performance.

Dahnke-Walker sued in a Kentucky court, and Bondurant defended on the ground that the plaintiff had not complied with a Kentucky statute prescribing the conditions on which foreign corporations might do business in that state. For this reason Bondurant contended the contract was not enforceable.

The suit resulted in a judgment for Dahnke-Walker at the trial court. But the Court of Appeals, while conceding the invalidity of the statute as applied to transactions in interstate commerce, held the transaction in question

was not in such commerce, declared the statute valid and properly enforceable as to that transaction, and reversed judgment with directions for a new trial. The Court of Appeals proceeded on the theory that, as the contract was made in Kentucky, related to property then in that state, and was to be wholly performed in Kentucky, the transaction was strictly intrastate and not protected by the Commerce Clause. At the second trial, a verdict
[fol. 16] was directed for Bondurant and the case was then affirmed in the Court of Appeals. Dahnke-Walker then appealed to the United States Supreme Court. In reversing the judgment, and holding the state statute to be repugnant to the Commerce Clause, the court said:

> The commerce clause . . . expressly commits to Congress and impliedly withholds from the several states the power to regulate commerce among the latter. Such commerce is not confined to transportation from one state to another, but comprehends all commercial intercourse between different states and all the component parts of that intercourse. . . . Where goods are purchased in one state for transportation to another, the [interstate] commerce includes the purchase quite as much as it does the transportation." (Citations omitted) 257 U.S. at 290.

The court looked to the practice and intent of the plaintiff and the general course of the business.

> The state court, stressing the fact that the contract was made in Kentucky and was to be performed there, put aside the further facts that the delivery was to be on board cars, and that the plaintiff, in continuance of its prior practice, was purchasing the grain for shipment to its mill in Tennessee. We think the facts so neglected had a material bearing and should have been

considered. They showed that what otherwise seemed an intrastate transaction was a part of interstate commerce. The state court attached some importance to the fact that after the grain was delivered on the cars, the plaintiff might have changed its mind and have sold the grain at the place of delivery, or could have shipped it to another point in Kentucky. Not that this
[fol. 17] was impossible, but it was also improbable. . . . The essential character of the transaction as otherwise fixed was not changed by a mere possibility of that sort. (Citations omitted) 257 U.S. at 292.

In a closely analogous case, the Supreme Court also relied upon the ordinary and traditional course of business as the factor which clearly fixed and determined the interstate character of the transaction. *Lemke v. Farmers' Grain Co.*, 258 U.S. 50 (1922). In *Shaffer v. Farmers' Grain Co.*, 268 U.S. 189 (1925), the court held at 198, 199:

> Buying for shipment, and shipping, to markets in other states when conducted as before shown, constitutes interstate commerce, —the buying as much a part of it as the shipping . . . . Wheat . . . is a legitimate article of commerce and the subject of dealings that are nationwide. The right to buy it for shipment, and ship it in interstate commerce, is not a privilege derived from state laws, and which they may fetter with conditions, but is a common right the regulation of which is committed to Congress and denied to the states by the commerce clause of the Constitution.

More recently, in *United States v. Rock Royal*, 307 U.S. 533, 568, 569 (1939) the court observed '[i]t is urged that the sale, a local transaction, is fully completed be-

fore any interstate commerce begins. . . . But where commodities are bought for use beyond state lines, the sale is a part of interstate commerce." See also, *Furst v. Brewster*, 282 U.S. 493 (1931).

Justice Holmes often explained that interstate commerce "is not a technical legal conception but a practi-
[fol. 18] cal one, drawn from the course of business."[8]

Having reviewed the course of the cotton business, Congress declared as a matter of public policy that "[c]otton is the basic natural fiber of the Nation. It is produced by many individual cottongrowers throughout the various cotton-producing States of the Nation. Cotton moves in a large part in the channels of interstate and foreign commerce and such cotton which does not move in such channels directly burdens or affects interstate commerce in cotton and cotton products. All cotton produced in the United States is in the current of interstate or foreign commerce or directly burdens, obstructs or affects interstate or foreign commerce in cotton and cotton products." 7 U.S.C.A. § 2101. As a legislative finding, Congress has also determined that "American cotton is a basic source of clothing and industrial products used by every person in the United States and by a substantial number of people in foreign countries. American cotton is sold in a worldwide market and moves from the places of production almost entirely in interstate and foreign commerce to processing establishments located throughout the world. . . ." 7 U.S.C.A. § 1341.

There is no significant amount of cotton milling in Mississippi:[9] ours is a cotton producing state. As a

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[8] **Swift & Co. v. United States**, 196 U.S. 375, 398 (1905); see also, **Eureka Pipe Line Co. v. Hallaman**, 257 U.S. 265 (1921).

[9] U.S. Department of Agriculture, Supplement for 1972 to Bulletin No. 417—Statistics on Cotton and Related Data, 1930-67, p. 58-77.

[fol. 19] practical matter in the cotton industry, Mississippi cotton almost invariably has an out-of-state destination.

F. APPLICATION OF THE LAW

Applying clear Congressional declarations of policy and what we regard as the controlling precedent expressed in *Dahnke-Walker*, *supra*, we hold that the interstate character vel non of these particular transactions must be judged in light of the recognized course of the cotton business. If, in view of the cotton trade and the relevant facts, it can be shown that the cotton was bought for the purpose of interstate shipment, then the transaction is one in interstate commerce and, by virtue of Mississippi law itself, the plaintiffs are not barred from this court. The fact that, as to the defendants, the transactions were completed in Mississippi, or that the cotton might have been diverted intrastate, or that the cotton temporarily came to rest in Mississippi before being loaded on board carriers cannot alter the nature of a transaction otherwise in interstate commerce.

As in *Dahnke-Walker*, the contracts in these cases were negotiated and executed in the forum state, the commodity was to be delivered by the seller and paid for by the buyer in Mississippi, and the commodity involved was one of nationwide and worldwide importance. The delivery was to be made either on board a truck or at a gin from whence the commodity would be removed once trucks became available.

In *Cone*, as in *Dahnke-Walker*, the commod-
[fol. 20] ity was to be transported beyond state lines for the use of the purchaser in the operation of its own mills, and is thus a transaction in interstate commerce. Allenberg does not purchase cotton for its own use, but for resale to others. In *Allenberg*, according to the general practice of the industry, the commodity became a part of interstate commerce when it was purchased by Allenberg.

These particular transactions did not constitute doing business in Mississippi for the purposes of the penalty statute because they are exempt transactions under the interstate commerce exception adopted by the Mississippi Legislature. Accordingly, the motions to dismiss are not well taken.

* * *

CONCLUSION

Appropriate orders will be entered in both
[fol. 25] actions to effectuate the holdings of the court as herein set forth.

Dated, this the 10th day of January, 1974.

/s/ Orma R. Smith
UNITED STATES DISTRICT JUDGE